THE HON'BLE SRI JUSTICE K.C.BHANU

COMMON ORDER IN

W.P.M.P.No. 25925 of 2005 in W.P.No.15247 of 2005

and

WRIT PETITION No. 15247 of 2005

Date: 29.09.2005

Writ Petition No. 15247 of 2005:

Between:

1) L.P.Sashi Kumar, s/o. L.J.Victor, r/o. 209,
Sikh Road, Secunderabad & another

…Petitioners

and

1) Govt. of Andhra Pradesh, Revenue (Registration 1)
Department, rep. by its Special Chief Secretary to
Government & 2 others

…Respondents

COMMON ORDER:

W.P.M.P. No.25295 of 2005:

1 . The Collector, Ranga Reddy district filed this petition to implead

himself as fourth respondent in the Writ Petition, stating that the land admeasuring Ac.39.00 in survey no.57 situated in Hashmathkpet village, Balanagar mandal, Ranga Reddy district belongs to the Government.

2 . The learned counsel for the petitioners contended that the preliminary decree passed in C.S. No. 14/1958 on 28.06.1963 became final in view of the fact that the Apex Court affirmed the same in S.L.P. (civil) Nos. 10622 and 10623 of 2001, 11996 of 2004 and the order of the Apex Court gave exclusive entitlement to the assignor.

3 . The case of the petitioners herein is that they have obtained a Deed of Assignment of Decree of undivided share in respect of the land situated in survey no.57 of Hashmathpet village, Balanagar mandal, Ranga Reddy district which formed part of item no.2 of Schedule IVA in pursuance of the preliminary decree dated 28.06.1963 in C.S. No.14/1958. Once the parties in C.S. No. 14/1958 were declared as owners even by the Courts, the Collector can not now turn around and claim that it is a Government land. It is expected from an Officer like District Collector to place some material to show that the land in survey no.57 belongs to the Government. He has not placed any material to show that *prima facie,* the land in survey no.57 belongs to the Government. It is stated by the learned counsel for the petitioners that the decree in C.S. No.14/1958 was passed directing the District Collector to demarcate the properties. Since the preliminary decree attained finality, the Collector can not now turn around and say that the property belongs to the Government.

4. Further, the memo dated 09.07.2002 issued by the Government of Andhra Pradesh made clear that in regard to survey nos. 7, 15 and 57, as per the Hasmathpet village, there seems to be no hurdle

whatsoever in handing over possession to the persons in whose favour records have been mutated, and a direction was given to the Collector to hand over the possession of the lands available in survey nos. 5, 15 and 57 as per the Hasmathpet village map to the persons in whose favour the records have been mutated.

5. A Division Bench of this Court in Writ Appeal No. 2222 of 2003 dated 11.03.2004, held, "... However, it(Government) failed to establish its title to the same by adducing either documentary or oral evidence. A preliminary decree was passed in the suit, which has since become final and conclusive." In view of the fact that the Government had failed to establish its title to the properties over which it claimed title in the written statement and since the preliminary decree has become final, obviously the Government would not be in any way concerned at all with the final decree proceedings. It would be a matter between owners and not with the Government. Suppressing all these facts, the Collector filed the W.P.M.P. still claiming that the property belongs to the Government. As rightly contended by the learned counsel for the petitioner, it is mischievous and misleading application filed by the District Collector. Therefore, it is liable to be dismissed.

The Petition is, accordingly, dismissed.

WRIT PETITION No. 15247 of 2005:

1. Heard both sides and at their request, the main Writ Petition itself is taken up for disposal.

2. Challenging the memo of the first respondent dated 04.07.2005 and for consequential direction to the respondents 2 and 3 to give effect to the clarificatory order of second respondent vide memo dated 27.06.2005, the present Writ Petition is filed.

3. The brief facts that are necessary for disposal of this Writ Petition, are as follows:

On 21.05.2005, the first petitioner obtained a Deed of Assignment of decree of undivided share in respect of land situated in Survey no.57 of Hashmathpet village, Balanagar mandal, Ranga Reddy district and it formed part of item no.2 of schedule IVA annexed to the preliminary decree dated 28.06.1963 passed in C.S. No.14 of 1958; that the decree was stamped and registered before the Joint Sub Registrar-I, Ranga Reddy, Moosapet and the petitioners gave an undertaking to pay the deficit stamp duty if necessary and in accordance with law; since an objection was raised by the authorities on the sufficiency of the stamp duty paid, the first petitioner submitted a representation for clarification about computation/ determination of appropriate stamp duty on the assignments of the preliminary decree; on 27.06.2005, the second respondent passed clarificatory order, which is traceable to the provisions of Section 56 of the Indian Stamp Act, 1899, to the effect that proper stamp duty is the consideration amount mentioned in the respective assignment deed; but, the first respondent issued impugned memo dated 04.07.2005 set aside the clarificatory order of the second respondent; that the said memo is passed without jurisdiction and without giving any reasons; hence, the Writ Petition.

4. The first respondent filed counter affidavit denying the averments in the petition and contending that the letter based on which the so-called clarification was issued is only an administrative correspondence seeking clarification from the second respondent; that the decision taken and communicated by the second respondent to the third respondent is only an administrative communication, but not a statutory order passed under Section 56(3) of the Indian Stamp Act, 1899; that the letter of the third respondent is not a reference under Section 56(2) of the Act nor the decision of the second respondent is a decision under the said Section; the petitioners did not make any representation for clarification; if the assignment deeds are allowed to be registered in the manner directed by the second

respondent, there would be huge loss of revenue to the State; there is nothing wrong on the part of the Government to keep the order in abeyance or set aside the same, in the interest of protecting legitimate revenue of the State; the clarificatory order is contrary to the provisions of Article 20 of the Indian Stamp Act, 1899, and so, it was set aside to enquire further and issue necessary instructions; that the orders impugned are intra-departmental communication; hence, the Writ Petition is liable to be dismissed.

5 . The learned counsel for the petitioners contended that the Government has no power and jurisdiction to issue the impugned memo; that there is no provision in the Indian Stamp Act, 1899 (for short, 'the Act') to issue such a direction; that the competent authority by virtue of Section 56(2) of the Act passed the order dated 27.06.2005, but the same was suspended by the Government vide memo dated 04.07.2005 without any authority; hence, he prayed to allow the Writ Petition. The learned counsel placed reliance on the decision of Full Bench of Madras High Court in *the Chief Controlling Revenue Authority, Board of Revenue, Madras v. K.S.Dwarakanathan* with regard to the payment of stamp duty.

6 . On the other hand, the learned Advocate General appearing on behalf of the respondents contended that the impugned order passed by the second respondent is not an order passed under Section 56(2) of the Act, but it is an administrative order and therefore, the first respondent-Government has every right to keep the said Order in abeyance; that there is no reference by the Collector to the second respondent under Section 56(2) of the Act; since the order passed by the second respondent is not traceable to any one of the statutory provisions of the Act, it is only an administrative order; by suspending the order passed by the first respondent, an illegal order can not be revived; hence, he prayed to dismiss the Writ Petition.

7. In the order of second respondent dated 27.06.2005, it is clarified that the question of chargeability will be decided on the recitals of the document; that transfer of decretal share in assignment deeds are chargeable as Conveyance under Article 20 of Schedule IA of I.S.Act as the shares are not apportioned into distinct and separate extent or parcel of identifiable property; that consideration is the criterion for chargeability of stamp duty and market value is not applicable for the preliminary decrees.

The order of the second respondent dated 27.06.2005 reads as follows:

> "… In this regard, the attention of the District Registrar may be drawn to the Section 21(4) of I.R. Act wherein certain pre requisites are mentioned i.e. Registration District or Sub District or Division or the Village in which the property is situated. In the referred case all the above ingredients are incorporated in the document, if these are mentioned in the document, the document is Registrable in Book-I.
>
> Therefore the District Registrar is requested to follow the instructions issued in this regard and not to raise any more doubts/clarifications on the subject matter in future."

8. The said order has been suspended by the first respondent vide memo dated 04.07.2005, which reads as follows:

> "On examination of the issues involved in the matter, it is decided to obtain the legal opinion on the chargeability of Stamp Duty in respect of the assignment deeds in question.
>
> The clarification instructions issued by the Commissioner & Inspector General of Registration and Stamps in the reference 1st and 2nd cited, are hereby set aside.
>
> The Commissioner & Inspector General of Registration and Stamps is requested to send connected records along with his remarks to enable the Government to examine the matter further.

He is also requested to furnish status of registrations if any done based on the clarifications issued by him.

The Commissioner & Inspector General of Registration and Stamps is also requested not to issue any clarificatory instructions regarding the chargeability of any document without referring the matter to Government for obtaining legal opinion from the Government in view of the huge revenue implications involved in the matter."

9. The main contention of the learned Advocate General is that the decision taken and communicated by the second respondent is only an administrative communication, but not a statutory order passed by him under Section 56(3) of the Act.

10. Sub-Sections (1) to (3) to Section 56 of the Act read as follows:

"(1) The powers exercisable by the Collector under Chapter IV and Chapter V and Clause (1) of the first proviso to Section 26 shall in all cases be subject to the control of the Chief Controlling Revenue Authority."

(2) If any Collector, acting under Section 31, Section 40 or Section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision."

So, sub-section (2) makes it clear that when the Collector viz. the third respondent, acting under Sections 31, 40 or 41, feels doubt as to the amount, he may draw up a statement of the case and refer it to the Chief Controlling Revenue Authority for his decision. Section 31 deals with adjudication as to the proper stamp duty when an instrument, whether executed or not and whether previously stamped

or not, is brought to the Collector as to the duty chargeable. Section 40 deals with the power of the Collector to stamp the instruments impounded and Section 41 deals with the instruments unduly stamped by accident.

11. The grievance of the petitioners is that the Deed of Assignment of decree dated 21.05.2005 was also stamped and registered as a document before the Joint Sub Registrar-I at Ranga Reddy, Moosapet; that regarding the question of sufficiency of amount paid towards the stamped and registered assignment deed, an objection was again raised by the stamp authorities despite the fact that they gave an undertaking to pay the deficit stamp duty if necessary and in accordance with law; that since a series of assignment deeds are involved in C.S. No.14/1958, the first petitioner submitted a representation for clarification about determination of appropriate stamp duty on the assignments of preliminary decree; then the second respondent issued the clarificatory order dated 27.06.2005 clarifying the proper stamp duty. According to the petitioners, the power of the second respondent is traceable to the provisions under Section 56(2) of the Act.

12. The learned Advocate General made available a copy of the letter No. 627/E1/2005, dated 02.02.2005, addressed by the District Registrar, Hyderabad. It is seen from the letter that the Deputy Registrar, during the course of examination of documents registered in R. O(OB) Hyderabad on 18.01.2005, come across certain documents styled as “Assignment Deeds” registered in Block-IV; as seen from the recitals of the document and in the light of the Registration Act, 1908 and the Transfer of Property Act, 1888, he was of the opinion that the assignment deed falls under clause © Sub-Section (1) of Section 17 and clause (c c) of Section 18 of the Registration Act, 1908, and hence, they are compulsorily registerable in Book-I. But, it was noticed by him that in this very case, the Joint

Sub Registrar-I R.O(OB), Hyderabad erred in registering them in Book-IV and therefore, he sought clarification as to whether his opinion is correct so as to enable him to assess the loss involved and initiate steps for recovery of the same.

13. But, as seen from the letter of the Deputy Registrar dated 02.02.2005, the assignments were already registered in Book No.4. As seen from the proceedings, the Deputy Registrar has drawn a statement of the case and referred the same to the Chief Controlling Officer with his opinion. The opinion of the Deputy Registrar is that the deeds involved transfer of title in land for a specified consideration and hence, chargeable to duty under Article 20 of Schedule I-A of the Indian Stamp Act. He also opined that the deeds may not be classified as sale deeds falling under the Article 47-A of Schedule I-A of Indian Stamps Act.

14. No doubt, Section 31 applies when an instrument is brought to the Collector by any person to have the opinion as to the duty with which it is chargeable. But, at the same time, the Collector entertained a doubt as to the amount of duty chargeable on the instrument. During the course of examination of the documents registered in R.O(OB), Hyderabad on 18.01.2005, he formed an opinion and sought clarification from the second respondent to enable him to assess the loss involved and initiate steps for recovery of the same. Hence, it is a *suo motu* exercise of power by the Collector with regard to the adjudication as to the proper stamp duty payable. Therefore, in my considered opinion, the *suo motu* exercise of power by the third respondent is traceable to Section 31 of the Act. When the Collector is given a power to adjudicate as to the proper stamp duty under Section 31 of the Act when an instrument was executed or not and previously stamped or not, is brought to him by a person for opinion, taking of *suo motu* exercise of adjudication as to the proper stamp duty payable on the instrument is incidental power.

Therefore, the Collector sought clarification from the second respondent. The order of the second respondent dated 27.06.2005 is traceable to Section 56(3) of the Act because when the third respondent came across certain documents registered in book-4 in stead of book-1 as compulsorily registerable, the second respondent gave a decision. Hence, this Court is of the opinion that the Order dated 27.06.2005 passed by the second respondent is not an administrative order, but it is traceable only to Section 56(3) of the Act.

15. Further more, the respondents have not brought to the notice of this Court the letter addressed by the third respondent to the second respondent dated 13.06.2005, which was referred to in the memo of the second respondent dated 27.06.2005. But, however, in this Writ Petition, the first respondent produced a letter dated 02.02.2005 addressed by the third respondent to the second respondent.

16. If the order of the second respondent dated 27.06.2005 is not an administrative order, the Government has no power to set aside the same since there is no provision under the Act to show that the Government can set aside the same. The only remedy available to the Government is to challenge the proceedings of the second respondent dated 27.06.2005 in a competent court of law in view of the fact that the order is traceable to one of the provisions of the Act. As rightly contended by the learned Advocate General, the Government has power to set aside, clarify the administrative orders of its subordinates and there is no difficulty in accepting the same. But, when once the order of the second respondent is traceable to the provisions of the Act and when the Government has no power to set aside the same under the provisions of the Act, the remedy of the Government is otherwise.

17. The learned counsel appearing for the petitioner placed strong reliance on the decision of a Full Bench of Madras High Court in *The*

Chief Controlling Revenue Authority, Board of Revenue, Madras (1 supra), wherein it is held as follows: (para 12)

" There is also an in-built lever in the Stamp Act itself in and by which the Revenue can prevent misuse in cases of such assignment of decrees for a ridiculously inadequate consideration. If the Revenue is satisfied that the consideration quoted and purported to have been received by the decree holder is so inadequately and abhorrently low as to create the impression that both the decree-holder and the assignee decree-holder were deliberately intending to cause wrongful loss to the Revenue and the public exchequer, then Section 27 read with Section 64 of the Act do provide for the requisite machinery to take action against the delinquents.

"27.Facts affecting duty to be set forth in instrument:-

The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein."

"64. Penalty for omission to comply with provisions of Section 27 – Any person, who with intent to defraud the Government-

(a)executes any instrument in which all the facts and circumstances required by Section 27 to be set forth in such instruments are not fully and truly set forth; or

(b)being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(c)does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to five hundred rupees".

As pointed out by Ramaswami, J. in re Venkataswami Aiya, AIR 1953 Mad. 941-

"…. As the law stands two courses are open when a document is sought to be registered or an undervaluation. First of all if the Registrar either from his own information or otherwise suspects that the valuation given is an undervaluation with intent to cheat the Government of the legitimate duty, he can ask for particulars from the party and if satisfied with its undervaluation can refuse to register the document unless proper duty was paid. Secondly, in case where the document gets registered and the information is

> subsequently received that the valuation shown is an undervaluation and that the legitimate stamp duty has been intentionally evaded to defraud the State, it will be open to the Registrar to initiate a prosecution under Section 27 read with Section 64 of the Stamp Act."

> Even in such cases, the burden is on the Government to show that there has been such gross undervaluation of the consideration and that such a valuation was made in order to defeat the interests of the Revenue. This proposition is an accepted one. Apart from the legal obligation of the signatories to an instrument which is liable to stamp duty to disclose true particulars in the instrument a mere apprehension on the part of the Government would not enable them to act under Section 64. There must be an intention to defraud the Government of its stamp revenue. It is for the Government as the prosecutor to affirmatively and satisfactorily establish such an intention as was stated in a decision of our Court in Narasimha Iyer v. Tahsildar of Wallajah 1937 Mad. WN 1071. The mere fact that a man sells his property for less than its worth can not be an offence under the section unless it is proved that the consideration quoted in the deed of sale is not the real consideration but something less and that the intention or effect was to defraud the Government of revenue."

18. On this aspect, the learned Advocate General contended that in the event of allowing the assignment deeds to be registered in the manner directed by the second respondent, there would be a huge loss of revenue to the State and it may run into about Rs. 100 crores. But, according to the above decision, in such cases, the burden is on the Government to show that there has been such gross under-valuation of the consideration and that such valuation was made in order to defeat the interest of the state revenue. If the petitioner deliberately intends to cause wrongful loss to the revenue, there are so many provisions under the Act to take care of such situations. For the aforesaid reasons, the impugned proceedings of the first respondent dated 04.07.2005 are liable to set aside on the ground that it has no jurisdiction since the order of the second respondent dated 27.06.2005 is made under Section 56(3) of the Act.

The Writ Petition is, accordingly, allowed.

(K.C.Bhanu, J.)

28 .09.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Bilal Nazki, the Acting Chief Justice, on

Day the day of September two thousand and five.

…Registrar